UNITED STATES DISTRICT COURT

Southern District of California

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W. Samuel Hamrick, Jr.,
Clerk of Court

June 4, 2008

Clerk, U.S. District Court
Central District of California − Eastern Division
3470 Twelfth Street
Riverside, CA 92501

Re: Thomas Brooks v. Walter Myers, et al., Case No. 3:08−cv−00960−H−JMA

Dear Sir or Madam:

Pursuant to Order transferring the above−entitled action to your District, we are electronically transmitting herewith our entire original file.

Sincerely yours,

W. Samuel Hamrick, Jr.,
Clerk of the Court

By: s/ A. Garcia, Deputy Clerk

Copy to Attorney for Plaintiffs:
Copy to Attorney for Defendants:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

THOMAS BROOKS, Inmate Booking #200814903, Plaintiff, vs. WALTER MYERS, Captain; St. GERMAIN, Correctional Deputy; GRESHAM, Correctional Deputy, Defendants.	Civil No. 08-0960 H (JMA) **ORDER TRANSFERRING CIVIL ACTION FOR LACK OF PROPER VENUE TO THE CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION, PURSUANT TO 28 U.S.C. § 84(c)(1), 28 U.S.C. § 1391(b) AND 28 U.S.C. § 1406(a)**

Thomas Brooks ("Plaintiff"), a pretrial detainee currently housed at the Robert Presley Detention Center ("RPDC") located in Riverside, California, has filed a civil rights Complaint. In this Complaint, Plaintiff alleges that the Captain of RPDC and two Riverside County Sheriff's Department Deputies assigned to RPDC, violated his constitutional rights by using excessive force against him and refusing to accommodate his disability. *See* Compl. at 1-5. Plaintiff has not prepaid the $350 civil filing fee mandated by 28 U.S.C. § 1914(a); instead he has filed a Motion to Proceed *In Forma Pauperis* pursuant to 28 U.S.C. § 1915(a) [Doc. No. 2].

I.

LACK OF PROPER VENUE

Upon initial review of the Complaint, the Court finds that Plaintiff's case lacks proper venue. Venue may be raised by a court sua sponte where the defendant has not yet filed a responsive pleading and the time for doing so has not run. *Costlow v. Weeks*, 790 F.2d 1486, 1488 (9th Cir. 1986). "A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought." 28 U.S.C. § 1391(b); *Costlow*, 790 F.2d at 1488; *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 842 (9th Cir. 1986). "The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interests of justice, transfer such case to any district in or division in which it could have been brought." 28 U.S.C. § 1406(a).

Here, Plaintiff claims constitutional violations based on events which are alleged to have occurred at RPDC, which is located in Riverside County. *See* Compl. at 1-2. Moreover, no defendant is alleged to reside in the Southern District. *See* 28 U.S.C. 84(d) ("The Southern District [of California] comprises the counties of Imperial and San Diego.").

Therefore, venue is proper in the Central District of California, Eastern Division, pursuant to 28 U.S.C. § 84(c)(1), which places Riverside County within its judicial district, but not in the Southern District of California. *See* 28 U.S.C. § 1391(b); *Costlow*, 790 F.2d at 1488.

II.

CONCLUSION AND ORDER

Accordingly, **IT IS HEREBY ORDERED** that the Clerk of the Court shall transfer this case for lack of proper venue, in the interests of justice and for the convenience of all parties, to the docket of the United States District Court for the Central District of California, Eastern

Division, pursuant to 28 U.S.C. § 84(c)(1), 28 U.S.C. § 1391(b) and 28 U.S.C. § 1406(a).[1]

DATED: **June 3, 2008**

MARILYN L. HUFF, District Judge
UNITED STATES DISTRICT COURT

[1] Because this Court finds transfer appropriate, it defers ruling on Plaintiff's Motion to Proceed IFP [Doc. No. 2] to the Central District of California, Eastern Division, and expresses no opinion as to whether Plaintiff's Complaint alleges facts sufficient to survive the sua sponte screening required by 28 U.S.C. §§ 1915(e)(2) & 1915A. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (noting that 28 U.S.C. § 1915(e) "not only permits but requires" the court to sua sponte dismiss an in forma pauperis complaint that fails to state a claim); *see also Resnick v. Hayes*, 213 F.3d 443, 446-47 (9th Cir. 2000) (discussing sua sponte screening per 28 U.S.C.§ 1915A(b)).